

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

AMBER KELLEHER,
Plaintiff,

v.

JOHN E. KELLEHER, et al.,
Defendants.

Case No. [13-cv-05450-MEJ](#)

ORDER CONTINUING CMC

**ORDER RE: DISCOVERY AND
PENDING MOTIONS**

This matter is currently scheduled for a Case Management Conference on May 1, 2014. In the parties' joint statement, Plaintiff states that she will seek to add the Estate of Ann Wells as an additional party-defendant as soon as the six-month bar to such claims under Georgia probate law runs, and no later than August 1, 2014. Plaintiff also states that she may seek leave to re-plead her claim for Actual Fraudulent Transfer against the Deans, and would do so by August 1, 2014.

In the joint statement, the parties state that no discovery has been conducted, yet there are now two summary judgment motions pending: Plaintiff filed her Motion for Partial Summary Judgment (Liability Only) re: Constructive Fraudulent Transfer on April 8, 2014 (Dkt. No. 42); and the Deans filed their Motion for Summary Judgment on April 24, 2014 (Dkt. No. 72). Further, as part of his Opposition to Plaintiff's Motion, Defendant John Kelleher filed a request pursuant to Federal Rule of Civil Procedure 56(d) to take discovery and obtain evidence sufficient to establish his defenses to this action. Dkt. No. 67.

Given that Plaintiff may seek to add an additional party with claims that will likely be similar or identical to her claims against the Deans, and the parties have not conducted discovery, the Court finds it prudent to defer ruling on any summary judgment motions until all parties have

1 appeared in this action and the parties have had time to conduct discovery. Accordingly, the Court
2 ORDERS as follows:

- 3 1) The May 1, 2014 Case Management Conference is VACATED.
- 4 2) John Kelleher's Rule 56(d) motion is GRANTED.
- 5 3) The parties' pending summary judgment motions are DENIED WITHOUT
6 PREJUDICE.¹
- 7 4) The parties shall commence discovery in compliance with the Federal Rules of
8 Civil Procedure.
- 9 5) Plaintiff shall file any Second Amended Complaint by August 1, 2014. If Plaintiff
10 intends to re-plead any causes of action that have already been dismissed, she shall
11 instead file a motion pursuant to Federal Rule of Civil Procedure 15.
- 12 6) The settlement conference referral remains in effect and the parties shall appear for
13 the conference with Chief Magistrate Judge Laporte as scheduled.
- 14 7) So that the parties can focus on settlement negotiations and discovery, no summary
15 judgment motions may be filed without further order from the Court.
- 16 8) The Court shall conduct a Case Management Conference on August 21, 2014 at
17 10:00 a.m. in Courtroom B, 15th Floor, 450 Golden Gate Avenue, San Francisco,
18 California. The parties shall file an updated joint statement by August 14, 2014.

19 **IT IS SO ORDERED.**

20 Dated: April 28, 2014

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23 MARIA-ELENA JAMES
24 United States Magistrate Judge
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28 ¹ Plaintiff's application for an Order enlarging her time to file her Response to the Deans' Motion for Summary Judgment is DENIED AS MOOT.